



General Assembly

January Session, 2011

***Amendment***

LCO No. 8194

**\*SB0111208194SD0\***

Offered by:

SEN. WILLIAMS, 29<sup>th</sup> Dist.  
SEN. LOONEY, 11<sup>th</sup> Dist.  
SEN. COLEMAN, 2<sup>nd</sup> Dist.  
SEN. DOYLE, 9<sup>th</sup> Dist.  
SEN. LEBEAU, 3<sup>rd</sup> Dist.

SEN. DUFF, 25<sup>th</sup> Dist.  
SEN. SLOSSBERG, 14<sup>th</sup> Dist.  
SEN. STILLMAN, 20<sup>th</sup> Dist.  
SEN. MEYER, 12<sup>th</sup> Dist.

To: Subst. Senate Bill No. 1112

File No. 454

Cal. No. 272

***"AN ACT CONCERNING BOATING UNDER THE INFLUENCE."***

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Subsection (b) of section 15-140l of the general statutes is  
4 repealed and the following is substituted in lieu thereof (*Effective July*  
5 *1, 2011*):

6 (b) Any person guilty of reckless operation of a vessel in the first  
7 degree while under the influence shall be fined not less than two  
8 thousand five hundred dollars or more than five thousand dollars or  
9 imprisoned not more than two years, or both and such person's safe  
10 boating certificate, certificate of personal watercraft operation or right  
11 to operate a vessel that requires a safe boating certificate shall be  
12 suspended by the commissioner in accordance with the provisions of

13 section 15-133.

14 Sec. 2. Subsection (b) of section 15-140n of the general statutes is  
15 repealed and the following is substituted in lieu thereof (*Effective July*  
16 *1, 2011*):

17 (b) Any person guilty of reckless operation of a vessel in the second  
18 degree while under the influence shall be fined not less than five  
19 hundred dollars or more than one thousand dollars or imprisoned not  
20 more than six months, or both and such person's safe boating  
21 certificate, certificate of personal watercraft operation or right to  
22 operate a vessel that requires a safe boating certificate shall be  
23 suspended by the commissioner in accordance with the provisions of  
24 section 15-133.

25 Sec. 3. Subsection (j) of section 15-140q of the general statutes is  
26 repealed and the following is substituted in lieu thereof (*Effective July*  
27 *1, 2011*):

28 (j) Notwithstanding the provisions of subsections (b) to (i),  
29 inclusive, of this section, any peace officer who obtains the results of a  
30 chemical analysis of a blood sample taken from an operator of a vessel  
31 involved in an accident who suffered or allegedly suffered physical  
32 injury in such accident shall notify the commissioner and submit to the  
33 commissioner a written report if such results indicate that at the time  
34 of the alleged offense such person had an elevated blood alcohol  
35 content, and if such person was arrested for a violation of section 15-  
36 132a, subsection (d) of section 15-133 or section 15-140l, as amended by  
37 this act, or 15-140n, as amended by this act, in connection with such  
38 accident. The report shall be made on a form approved by the  
39 commissioner containing such information as the commissioner  
40 prescribes and shall be subscribed and sworn under penalty of false  
41 statement, as provided in section 53a-157b, by the peace officer. The  
42 commissioner shall, after notice and an opportunity for hearing, which  
43 shall be conducted in accordance with chapter 54, suspend the safe  
44 boating certificate, right to operate a vessel that requires a safe boating

45 certificate for operation or certificate of personal watercraft operation  
46 of such person for a period of up to ninety days, or, if such person has  
47 previously had such person's operating privilege suspended under this  
48 section, for a period up to one year. Each hearing conducted under this  
49 section shall be limited to a determination of the following issues: (1)  
50 Whether the peace officer had probable cause to arrest the person for  
51 operating a vessel while under the influence of intoxicating liquor or  
52 drugs, or both, or while such person has an elevated blood alcohol  
53 content; (2) whether such person was placed under arrest; (3) whether  
54 such person was operating the vessel; (4) whether the results of the  
55 analysis of the blood of such person indicate that such person had an  
56 elevated blood alcohol content; and (5) whether the blood sample was  
57 obtained in accordance with conditions for admissibility as set forth in  
58 subsection (b) of section 15-140r or section 15-140s, as amended by this  
59 act. If, after such hearing, the commissioner finds on any issue in the  
60 negative, the commissioner shall not impose a suspension. The fees of  
61 any witness summoned to appear at the hearing shall be the same as  
62 provided by the general statutes for witnesses in criminal cases.

63 Sec. 4. Section 15-140r of the general statutes is repealed and the  
64 following is substituted in lieu thereof (*Effective July 1, 2011*):

65 (a) Except as provided in section 15-140s, as amended by this act, or  
66 subsection (d) of this section, in any criminal prosecution for the  
67 violation of section 15-132a, subsection (d) of section 15-133, section 15-  
68 140l, as amended by this act, or 15-140n, as amended by this act, or  
69 subsection (b) of section 53-206d, evidence respecting the amount of  
70 alcohol or drug in the defendant's blood or urine at the time of the  
71 alleged offense, as shown by a chemical analysis of the defendant's  
72 breath, blood or urine shall be admissible and competent provided: (1)  
73 The defendant was afforded a reasonable opportunity to telephone an  
74 attorney prior to the performance of the test and consented to the  
75 taking of the test upon which such analysis is made; (2) a true copy of  
76 the report of the test result was mailed to or personally delivered to the  
77 defendant within twenty-four hours or by the end of the next regular  
78 business day, after such result was known, whichever is later; (3) the

79 test was performed by or at the direction of a certified law enforcement  
80 officer according to methods and with equipment approved by the  
81 Department of Public Safety, and if a blood test was performed, it was  
82 performed on a blood sample taken by a person licensed to practice  
83 medicine and surgery in this state, a qualified laboratory technician, an  
84 emergency medical technician II or a registered nurse in accordance  
85 with the regulations adopted under subsection (b) of this section; (4)  
86 the device used for such test was checked for accuracy in accordance  
87 with the regulations adopted under subsection (b) of this section; (5) an  
88 additional chemical test of the same type was performed at least thirty  
89 minutes after the initial test was performed or, if requested by the  
90 peace officer for reasonable cause, an additional chemical test of a  
91 different type was performed to detect the presence of a drug or drugs  
92 other than or in addition to alcohol, except that the results of the initial  
93 test shall not be inadmissible under this subsection if reasonable efforts  
94 were made to have such additional test performed in accordance with  
95 the conditions set forth in this subsection and such additional test was  
96 not performed or was not performed within a reasonable time, or the  
97 results of such additional test are not admissible for failure to meet a  
98 condition set forth in this subsection; and (6) evidence is presented that  
99 the test was commenced within two hours of operation of the vessel or  
100 expert testimony establishes the reliability of a test commenced beyond  
101 two hours of operation of the vessel. In any prosecution under this  
102 section it shall be a rebuttable presumption that the results of such  
103 chemical analysis establish the ratio of alcohol in the blood of the  
104 defendant at the time of the alleged offense, except that if the results of  
105 the additional test indicate that the ratio of alcohol in the blood of such  
106 defendant is ten-hundredths of one per cent or less of alcohol, by  
107 weight, and is higher than the results of the first test, evidence shall be  
108 presented that demonstrates that the test results and the analysis  
109 thereof accurately indicate the blood alcohol content at the time of the  
110 alleged offense.

111 (b) The Commissioner of Public Safety shall ascertain the reliability  
112 of each method and type of device offered for chemical testing and

113 analysis of blood, of breath and of urine and certify those methods and  
114 types which the Commissioner of Public Safety finds suitable for use in  
115 testing and analysis of blood, breath and urine, respectively, in this  
116 state. The Commissioner of Public Safety, after consultation with the  
117 Commissioner of Public Health, shall adopt regulations, in accordance  
118 with chapter 54, governing the conduct of chemical tests, the operation  
119 and use of chemical test devices and the training and certification of  
120 operators of such devices and the drawing or obtaining of blood,  
121 breath or urine samples as the Commissioner of Public Safety finds  
122 necessary to protect the health and safety of persons who submit to  
123 chemical tests and to insure reasonable accuracy in testing results.  
124 Such regulations shall not require recertification of a peace officer  
125 solely because such officer terminates such officer's employment with  
126 the law enforcement agency for which certification was originally  
127 issued and commences employment with another such agency.

128 (c) If a person is charged with a violation of section 15-132a,  
129 subsection (d) of section 15-133, 15-140l, as amended by this act, or 15-  
130 140n, as amended by this act, the charge may not be reduced, nolle or  
131 dismissed unless the prosecuting authority states in open court such  
132 prosecutor's reasons for the reduction, nolle or dismissal.

133 (d) In any criminal prosecution for a violation of section 15-132a,  
134 subsection (d) of section 15-133 or section 15-140l, as amended by this  
135 act, or 15-140n, as amended by this act, evidence that the defendant  
136 refused to submit to a blood, breath or urine test requested in  
137 accordance with section 15-140q, as amended by this act, shall be  
138 admissible provided the requirements of subsection (a) of said section  
139 have been satisfied. If a case involving a violation of section 15-132a,  
140 subsection (d) of section 15-133 or section 15-140l, as amended by this  
141 act, or 15-140n, as amended by this act, is tried to a jury, the court shall  
142 instruct the jury as to any inference that may or may not be drawn  
143 from the defendant's refusal to submit to a blood, breath or urine test.

144 Sec. 5. Section 15-140s of the general statutes is repealed and the  
145 following is substituted in lieu thereof (*Effective July 1, 2011*):

146 Evidence respecting the amount of alcohol or drug in the blood or  
 147 urine of an operator of a vessel involved in an accident who has  
 148 suffered or allegedly suffered physical injury in such accident, which  
 149 evidence is derived from a chemical analysis of a blood or urine  
 150 sample taken from such person at the scene of the accident, while en  
 151 route to a hospital or at a hospital after such accident, shall be  
 152 competent evidence to establish probable cause for the arrest by  
 153 warrant of such person for a violation of [subsection (d) of section]  
 154 section 15-132a, 15-133, 15-140l, as amended by this act, or 15-140n, as  
 155 amended by this act, and shall be admissible and competent in any  
 156 subsequent prosecution thereof if: (1) The blood or urine sample was  
 157 taken in the regular course of business of the hospital for the diagnosis  
 158 and treatment of such injury; (2) the blood sample was taken by a  
 159 person licensed to practice medicine in this state, a qualified laboratory  
 160 technician, an emergency technician II or a registered nurse; (3) a  
 161 police officer has demonstrated to the satisfaction of a judge of the  
 162 Superior Court that such officer has reason to believe that such person  
 163 was operating a vessel while under the influence of intoxicating liquor  
 164 or drug, or both, and that the chemical analysis of such blood or urine  
 165 sample constitutes evidence of the commission of the offense of  
 166 operating a vessel upon the waters of this state while under the  
 167 influence of intoxicating liquor or drug, or both, in violation of  
 168 [subsection (d) of section] section 15-132a, 15-133, 15-140l, as amended  
 169 by this act, or 15-140n, as amended by this act; and (4) such judge has  
 170 issued a search warrant in accordance with section 54-33a authorizing  
 171 the seizure of the chemical analysis of such blood or urine sample."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	15-140l(b)
Sec. 2	<i>July 1, 2011</i>	15-140n(b)
Sec. 3	<i>July 1, 2011</i>	15-140q(j)
Sec. 4	<i>July 1, 2011</i>	15-140r
Sec. 5	<i>July 1, 2011</i>	15-140s